



Public Notice

US Army Corps
of Engineers
Detroit District

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REISSUANCE OF NATIONWIDE PERMITS AND REGIONAL CONDITIONS IN INDIANA

On March 12, 2007, in Part II of the *Federal Register* (72 FR 11092-11198), the U.S. Army Corps of Engineers (Corps) announced the reissuance of all 43 existing Nationwide Permits (NWP), general conditions, and definitions with some modifications. The Corps also issued six new NWPs, two new general conditions, and 13 new definitions. The NWPs and the general conditions went into effect on March 19, 2007.

Louisville and Detroit Districts have developed regional conditions for the new and reissued NWPs. Regional conditions will provide additional protection for the aquatic environment, by ensuring that the NWPs authorize only those activities with minimal adverse effects on the aquatic environment. Regional conditions will help ensure protection of high value waters within the District. In addition, the LRD Division Engineer has also approved the continued suspension of 16 NWPs in the State of Indiana for NWPs 7, 11, 13, 14, 15, 18, 19, 25, 29, 36, 39, 40, 41, 42, 43, and 44 based on the availability of an existing Regional General permit.

The Indiana Department of Environmental Management (IDEM) issued Section 401 Water Quality Certification (WQC), some with conditions for NWPs 1-6, 9, 10, 12, 16, 21, 22, 24, 27, 28, 30, 33, 37, 45-47, 49, and 50. IDEM denied 401 WQC for NWPs 8, 17, 20, 23, 31, 32, 34, 35, 38, and 48. An individual 401 WQC from IDEM will be required for any project authorized by one of the NWP with a 401 WQC denial. The full text of the final NWPs, general conditions, definitions and Water Quality Certifications issued by IDEM are available on the Detroit District Regulatory Home page at <http://www.lre.usace.army.mil/regulatory>.

The March 12, 2007, *Federal Register* notice is available for viewing at the Corps of Engineers Detroit District, Regulatory Office, 477 Michigan Avenue, Detroit, Michigan, or on the Internet at http://www.usace.army.mil/cw/cecwo/reg/nwp/nwp_2007_final.pdf. As an alternate, World Wide Web users can access the *Federal Register* through the U.S. Government Printing Office at <http://www.gpoaccess.gov/fr/index.html>.

The Corps has also issued final decision documents for the new and reissued NWP's. These documents are also available on the Internet at http://www.usace.army.mil/cw/cecwo/reg/nwp/nwp_final.htm and Corps district offices. Furthermore, the NWP decision documents have been supplemented by Division Engineers to address decisions concerning regional conditions of the NWP's.

Enclosed is an index of the NWP's and regional conditions, including IDEM WQC conditions. If you have questions concerning the regional conditions or Nationwide permits in the Detroit District contact Kristi DeFoe at (313) 226-7718 or e-mail at: kristi.m.defoe@lre02.usace.army.mil.

John Konik
Chief Regulatory Office
Engineering & Technical Services

NOTICE TO POSTMASTERS:

We request that the above notice be conspicuously and continuously posted for the time period of this notice.

Index of Nationwide Permits, Conditions and Definitions

Nationwide Permits

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48. Existing Commercial Shellfish Aquaculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities

Nationwide Permit General Conditions

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Definitions

Best management practices (BMPs)
Compensatory mitigation
Currently serviceable
Discharge
Enhancement
Ephemeral stream
Establishment (creation)
Historic property
Independent utility
Intermittent stream
Loss of waters of the United States
Non-tidal wetland
Open water
Ordinary high water mark
Perennial stream
Practicable
Pre-construction notification
Preservation
Re-establishment
Rehabilitation
Restoration
Riffle and pool complex
Riparian areas
Shellfish seeding
Single and complete project
Stormwater management
Stormwater management facilities
Stream bed
Stream channelization
Structure
Tidal wetland
Vegetated shallows
Waterbody

Nationwide Permits

1. Aids to Navigation

IDEM granted Section 401 WQC for this NWP subject to general conditions.

2. Structures in Artificial Canals

IDEM granted Section 401 WQC for this NWP subject to general conditions.

3. Maintenance

IDEM granted Section 401 WQC for this NWP subject to general and specific conditions.

4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities

IDEM granted Section 401 WQC for this NWP subject to general conditions.

5. Scientific Measurement Devices

IDEM granted Section 401 WQC for this NWP subject to general conditions.

6. Survey Activities

IDEM granted Section 401 WQC for this NWP subject to general conditions.

7. Outfall Structures and Associated Intake Structures

Louisville and Detroit Districts have suspended this NWP.

8. Oil and Gas Structures on the Outer Continental Shelf

NWP not applicable in Indiana.

9. Structures in Fleeting and Anchorage Areas

IDEM granted Section 401 WQC for this NWP subject to general conditions.

10. Mooring Buoys

IDEM granted Section 401 WQC for this NWP subject to general conditions.

11. Temporary Recreational Structures

Louisville and Detroit Districts have suspended this NWP.

12. Utility Line Activities

Corps' NWP 12 Regional Conditions:

- a. Notification is required for all substations.**
- b. Impacted wetlands outside of permanently maintained rights of way shall be restored to the same or more valuable wetland type (e.g. forested wetlands shall be restored to forested wetlands). Within permanently maintained rights of way, impacted wetlands shall be restored, unless otherwise authorized by the Corps.**

- c. For utility lines placed across the channel of an authorized Federal navigation project, the following conditions apply: 1) the line must be embedded at least 6 feet below the authorized Federal channel depth; 2) existing and proposed elevation information on precise plan and section scale drawings are required; 3) within 60 days after construction, an as-built survey must be provided indicating the points of entry and exit of the installation.**
- d. Notification is required for all stream crossings.**

IDEM granted Section 401 WQC for this NWP subject to general and specific conditions.

13. Bank Stabilization

Louisville and Detroit Districts have suspended this NWP.

14. Linear Transportation Projects

Louisville and Detroit Districts have suspended this NWP.

15. U.S. Coast Guard Approved Bridges

Louisville and Detroit Districts have suspended this NWP.

16. Return Water From Upland Contained Disposal Areas

IDEM granted Section 401 WQC for this NWP subject to general conditions.

17. Hydropower Projects

IDEM denied Section 401 WQC for this NWP.

18. Minor Discharges

Louisville and Detroit Districts have suspended this NWP.

19. Minor Dredging

Louisville and Detroit Districts have suspended this NWP.

20. Oil Spill Cleanup

IDEM denied Section 401 WQC for this NWP.

21. Surface Coal Mining Operations

IDEM granted Section 401 WQC for this NWP.

22. Removal of Vessels

IDEM granted Section 401 WQC for this NWP.

23. Approved Categorical Exclusions

IDEM denied Section 401 WQC for this NWP.

24. Indian Tribe or State Administered Section 404 Programs

IDEM granted Section 401 WQC for this NWP.

25. Structural Discharges

Louisville and Detroit Districts have suspended this NWP.

26. [Reserved]

27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities

IDEM granted Section 401 WQC for this NWP subject to general and specific conditions.

28. Modifications of Existing Marinas

IDEM granted Section 401 WQC for this NWP subject to general conditions.

29. Residential Developments

Louisville and Detroit Districts have suspended this NWP.

30. Moist Soil Management for Wildlife

IDEM granted Section 401 WQC for this NWP subject to general conditions.

31. Maintenance of Existing Flood Control Facilities

IDEM denied Section 401 WQC for this NWP.

32. Completed Enforcement Actions

IDEM denied Section 401 WQC for this NWP.

33. Temporary Construction, Access, and Dewatering

IDEM granted Section 401 WQC for this NWP subject to general conditions.

34. Cranberry Production Activities.

IDEM denied Section 401 WQC for this NWP.

35. Maintenance Dredging of Existing Basins.

IDEM denied Section 401 WQC for this NWP.

36. Boat Ramps

Louisville and Detroit Districts have suspended this NWP.

37. Emergency Watershed Protection and Rehabilitation

IDEM granted Section 401 WQC for this NWP subject to general and specific conditions.

38. Cleanup of Hazardous and Toxic Waste

IDEM denied Section 401 WQC for this NWP.

39. Commercial and Institutional Developments

Louisville and Detroit Districts have suspended this NWP.

40. Agricultural Activities

Louisville and Detroit Districts have suspended this NWP.

41. Reshaping Existing Drainage Ditches

Louisville and Detroit Districts have suspended this NWP.

42. Recreational Facilities

Louisville and Detroit Districts have suspended this NWP.

43. Stormwater Management Facilities

Louisville and Detroit Districts have suspended this NWP.

44. Mining Activities

Louisville and Detroit Districts have suspended this NWP.

45. Repair of Uplands Damaged by Discrete Events

IDEM granted Section 401 WQC for this NWP subject to general conditions.

46. Discharges in Ditches

IDEM granted Section 401 WQC for this NWP subject to general and specific conditions.

47. Pipeline Safety Program Designated Time Sensitive Inspections and Repairs

IDEM granted Section 401 WQC for this NWP subject to general and specific conditions.

48. Existing Commercial Shellfish Aquaculture Activities

IDEM denied Section 401 WQC for this NWP.

49. Coal Remining Activities

IDEM granted Section 401 WQC for this NWP subject to general conditions.

50. Underground Coal Mining Activities

IDEM granted Section 401 WQC for this NWP subject to general conditions.

Corps' Regional Conditions Applicable to all NWP's within Indiana:

1. Excavation/dredging from areas of known or suspected contamination requires:
 - a) Placement of the material in a Confined Disposal Facility or Class II landfill; or
 - b) Placement of the material by other Corps' approved method; or
 - c) Testing to demonstrate that the material is not contaminated. If the material is determined to be contaminated, it must be disposed of in a. or b. above.

2. Notification in accordance with Condition 27 is required to the Corps for all activities which would cause, alter, or affect diversion of water from the Great Lakes basin.

3. Notification in accordance with Condition 27 is required to the Corps for all activities affecting waters identified below in Attachments 1 and 2 to IDEM's Section 401 Water Quality Certification letter dated July 2, 2007.

IDEM Water Quality Certification Conditions for NWP's in Indiana:

GENERAL CONDITIONS

The following conditions shall apply to any permittee whose project qualifies under any NWP approved under this certification. All activities that do not meet these conditions require an individual WQC from the IDEM and are not authorized under this WQC.

1. The permittee shall deposit any dredged material in a contained upland disposal area to prevent sediment runoff to any waterbody. The discharge of return water from upland contained disposal areas is not authorized by this WQC. Such discharges are regulated by the IDEM's National Pollutant Discharge Elimination System Permitting Program. Persons qualifying for this NWP are advised to contact the IDEM regarding the possible need for additional permits or authorizations.

2. This WQC does not authorize the discharge of storm water or the discharge of pollutants (such as sediment) associated with storm water. This WQC incorporates the conditions at 327 IAC 15-5-7 as general conditions of this WQC. Compliance with the general permits at 327 IAC 15-5, or 327 IAC 15-6 (commonly referred to as a Rule 5 and Rule 6 respectively) is sufficient to demonstrate compliance with this condition of the WQC.

3. The permittee shall allow the commissioner or an authorized representative of the commissioner (including an authorized contractor), upon the presentation of credentials to:
 - a) Enter upon the permittee's property;
 - b) Have access to and copy at reasonable times any records that must be kept under the conditions of these permits or this certification;
 - c) Inspect, at reasonable times, any monitoring or operational equipment or method; collection, treatment, pollution management or discharge facility or device; practices required by this certification; and any mitigation site; and
 - d) Sample or monitor any discharge of pollutants or any mitigation site.

4. This granting of WQC does not relieve the recipient of the certification from the responsibility of obtaining any other permits or authorizations that may be required for this project or related activities from the IDEM or any other agency or person.

5. This certification does not:
 - a) Authorize impacts or activities outside the scope of this certification;
 - b) Authorize any injury to permittees or private property or invasion of other private rights, or any infringement of federal, state or local laws or regulations;
 - c) Convey any property rights of any sort, or any exclusive privileges;

- d) Preempt any duty to obtain federal, state or local permits or authorizations required by law for the execution of the project or related activities; or
- e) Authorize changes in the plan design detailed in the application.
6. This WQC does not authorize point source discharges of pollutants other than clean fill¹ and uncontaminated dredged material.
7. This WQC does not authorize activities on or in any of the State's waters that have been designated by the Water Pollution Control Board as: Salmonid Waters (cold water streams), Outstanding State and/or National Resource Waters, and Exceptional Use Waters. (see **Attachment #1**).
8. This WQC does not authorize activities on or in any critical wetland or critical special aquatic site (see **Attachment #2**).
9. This WQC does not authorize activities on or in any tributary of salmonid waters within a two river mile reach upstream from the confluence with the salmonid water between April 1 and June 30 or between August 1 and November 15 unless the Indiana Department of Natural Resources (IDNR) has granted a waiver for that activity.
10. This WQC does not authorize activities on or in any non-salmonid stream between April 1 and June 30 unless the IDNR has granted a waiver for that activity.
11. The permittee must demonstrate, via letter from the IDNR, Division of Nature Preserves, that no state endangered, threatened, or rare species is documented on a permanent or seasonal basis within a 1/2-mile radius of the proposed project site by the Indiana Natural Heritage Data Center, or must provide documentation from the IDNR stating that the proposed activities will not constitute a violation of state laws protecting these species.
12. This WQC does not authorize activities associated with the establishment of a mitigation bank.
13. This WQC allows the use of multiple RGPs and NWP's on the same project. However, if any of the permits contain acreage or linear footage thresholds then the cumulative acreage and linear footage of effect on waters of the U.S. must be equal to or less than the most restrictive thresholds specified in each permit. For example, a road project may include several stream and wetland crossings. If the cumulative effect of these crossings is less than 0.1 acre and 300 linear feet and each crossing meets the other requirements of the permit and this WQC, then each crossing can qualify for a separate RGP#1. If, however, the cumulative effect of these crossings is greater than 0.1 acre or 300 linear feet then the activities are not authorized by this WQC and an individual WQC is required. The IDEM may certify several federal permits or licenses under one individual WQC.
14. In order to verify that a given project will qualify under the terms and conditions of this certification, the IDEM may require additional information from the applicant. If the applicant fails to provide any information requested by the IDEM, then the project is not authorized.
15. The IDEM, for any project that qualifies under the terms and conditions of this certification, may choose to require an individual WQC if it determines that the project would have more than minimal impacts to water quality, either viewed individually or collectively with other projects that may affect the same waterbody affected by the proposed project.

¹ Clean fill, for the purpose of this WQC, means uncontaminated rocks, bricks, concrete, road demolition waste materials, or dirt.

SPECIFIC CONDITIONS

The following conditions apply to the NWP as listed. All activities that do not meet these conditions require an individual WQC from the IDEM and are not authorized under the WQC.

NATIONWIDE PERMIT #3, MAINTENANCE, SPECIFIC CONDITIONS

1. For activities involving the replacement of a stream encapsulation:
 - a) The replacement will not reduce the cross-sectional area under bank full elevation;
 - b) The replacement will not increase the length of the total encapsulation to over 150 feet;
 - c) The replacement will have either the same slope as the existing encapsulation, or will more closely match the slope of the stream² immediately upstream and downstream of the encapsulation;
 - d) The type of replacement encapsulation is the same as the existing type of encapsulation;
 - e) Bank stabilization and channel bottom stabilization do not exceed either one bankfull width upstream and downstream of the replacement encapsulation or ten linear feet whichever is greater; and
 - f) Any channel bottom stabilization is flush with the existing grade of the stream bottom.
2. For all other maintenance activities:
 - a) The activity will permanently affect one-tenth (0.1) of an acre or less of waters of the United States;
 - b) The activity will not permanently change the sinuosity, flow path, velocity, cross sectional area under the bank full elevation or the slope of a stream;
 - c) The activity will permanently affect 300 linear feet or less of stream channel, streambank or lake shoreline;
 - d) In the case of bank stabilization activities, the permittee demonstrates that the bank or shoreline in question is unstable; and
 - e) The activity will not result in a permanent secondary effect to waters of the U.S. (e.g., dredging, excavation, damming, creation of in-channel ponds) that, when combined with the primary effect, exceeds the area and length thresholds specified above.

NATIONWIDE PERMIT #12, UTILITY LINE ACTIVITIES, SPECIFIC CONDITIONS

1. The permittee notifies the IDEM at least 30 days prior to the activity unless the only regulated activity is the construction of a stream crossing where the crossing is constructed using directional boring or other related technique that does not involve the placement of fill materials within a regulated waterbody. Other forms of crossings, such as trenching, pipeline armoring, etc., require notification to IDEM;
2. Notification to the IDEM is required for any pipeline project that involves crossing wetlands and will involve restoring the wetlands to pre-construction grade and contours. A copy of the restoration plan must be submitted with the Notification Form;
3. The activity will permanently affect one-tenth (0.1) of an acre or less of waters of the United States;
4. The activity will not permanently change the sinuosity, flow path, velocity, cross sectional area under the bank full elevation or the slope of a stream;
5. The activity will permanently affect 300 linear feet or less of streambank or lake shoreline;
6. In the case of bank stabilization activities or new lake and reservoir shoreline stabilization activities, the permittee demonstrates that the bank or shoreline in question is unstable; and
7. The activity will not result in a permanent secondary effect to waters of the U.S. (e.g., dredging, excavation, damming, creation of in-channel ponds) that, when combined with the primary effect, exceeds the area and length thresholds specified above.

² Stream, for the purpose of this Water Quality Certification, means waters of the U.S. that have a defined bed and bank and convey water ephemerally, intermittently or perennially. This term includes natural streams, relocated streams, channelized streams, artificial channels, encapsulated channels and ditches.

NATIONWIDE PERMIT #27, AQUATIC HABITAT RESTORATION, ESTABLISHMENT, AND ENHANCEMENT ACTIVITIES, SPECIFIC CONDITIONS

1. An activity qualifies for this NWP because it will have a minimal effect if:
 - a) The activity will permanently affect one-tenth (0.1) of an acre or less of waters of the United States;
 - b) The activity will permanently affect 300 linear feet or less of streambank or lake shoreline; and
 - c) The activity will not result in a permanent secondary effect to waters of the U.S. (e.g., dredging, excavation, damming, creation of in-channel ponds) that, when combined with the primary effect, exceeds the area and length thresholds specified above.
2. An activity qualifies for this NWP because it is a component of a restoration program previously approved by the IDEM if:
 - a) The activity occurs within the same sub-watershed³ as a water that the IDEM has identified as impaired; and
 - b) The IDEM identified the activity as beneficial for reducing or eliminating the impairment in a Total Maximum Daily Load (TMDL), an IDEM approved Watershed Plan or a Memorandum of Agreement or Memorandum of Understanding with the agency sponsoring the restoration or enhancement activities.
3. An activity qualifies for this NWP because it is a qualifying AML project if:
 - a) The activity is undertaken by the IDNR, Division of Reclamation, AML Program;
 - b) The activity is designed to improve water quality in an impaired water of the State where the source of impairment is acid mine contamination;
 - c) The activity facilitates the treatment of acid mine drainage or covers a source of impairment⁴; and
 - d) The activity does not result in the discharge of dredged or fill material into any wetland, stream or other waters of the U.S. that are unimpaired by acid mine drainage unless that discharge qualifies under specific condition #1 above.

NATIONWIDE PERMIT #37, EMERGENCY WATERSEIED PROTECTION AND REHABILITATION, SPECIFIC CONDITIONS

1. The activity is consistent with a Memorandum of Agreement or Memorandum of Understanding between the IDEM and the Natural Resources Conservation Service, the United States Forest Service, the Department of the Interior, the Farm Service Agency, or the IDNR. This agreement must be in place prior to the emergency situation and must ensure that the emergency activities authorized under NWP #37 will not cause or contribute to permanent water quality degradation or impairment.

NATIONWIDE PERMIT #46, DISCHARGES TO DITCHES, SPECIFIC CONDITIONS

1. The activity will not permanently change the velocity, cross sectional area under the bank full elevation or the slope of the ditch.

NATIONWIDE PERMIT #47, PIPELINE SAFETY PROGRAM DESIGNATED TIME SENSITIVE INSPECTIONS AND REPAIRS, SPECIFIC CONDITIONS

1. The activity will permanently affect one-tenth (0.1) of an acre or less of waters of the United States;
2. The activity will not permanently change the sinuosity, flow path, velocity, cross sectional area under the bank full elevation or the slope of a stream;
3. The activity will permanently affect 300 linear feet or less of streambank or lake shoreline;

³ For the purposes of this WQC, sub-watershed means the U.S. Geological Survey's 14-digit Hydrologic Unit Code (HUC).

⁴ AML projects that qualify generally consist of damming or relocating waters carrying acid mine contamination to divert flow into constructed treatment systems.

4. In the case of bank stabilization activities or new lake and reservoir shoreline stabilization activities, the permittee demonstrates that the bank or shoreline in question is unstable; and
5. The activity will not result in a permanent secondary effect to waters of the U.S. (e.g., dredging, excavation, damming, creation of in-channel ponds) that, when combined with the primary effect, exceeds the area and length thresholds specified above.

Attachment 1 - Indiana Waters Designated for Special Protection

Designated Salmonid Waters :

- ? West Branch, Little Calumet River and its tributaries, downstream from the dam at 29th Avenue (Deep River) to Lake Michigan via Burns Waterway, Lake and Porter County.
- ? Galena River and its Tributaries, LaPorte County.
- ? Trail Creek and its tributaries, downstream to Lake Michigan, LaPorte County.
- ? East Branch, Little Calumet River and its tributaries, downstream to Lake Michigan, via Burns Waterway, Porter and LaPorte counties.
- ? Kintzele Ditch (Black Ditch) from Beverly Drive downstream to Lake Michigan, Porter County.
- ? Salt Creek and its tributaries upstream of its confluence with the Little Calumet River, Porter County.
- ? St. Joseph River and its tributaries from Twin Branch dam downstream to the Indiana/Michigan state line, St. Joseph County.
- ? Waters designated by IDNR for put-and-take trout fishing.

Waterbodies which have been designated all or partially as Outstanding State Resource Waters:

- ? The Blue River in Washington, Crawford, and Harrison counties.
- ? Cedar Creek in Allen and DeKalb counties.
- ? The North Fork of Wildcat Creek in Carroll and Tippecanoe counties.
- ? The South Fork of Wildcat Creek in Tippecanoe County.
- ? The Indiana portion of Lake Michigan.
- ? All waters incorporated in the Indiana Dunes National Lakeshore.

Streams which have been designated all or partially as Exceptional Use Streams :

- ? Big Pine Creek in Warren County.
- ? Mud Pine Creek in Warren County.
- ? Fall Creek in Warren County.
- ? Indian Creek in Montgomery County.
- ? Clifty Creek in Montgomery County.
- ? Bear Creek in Fountain County.
- ? Rattlesnake Creek in Fountain County.
- ? The small tributary to Bear Creek in Fountain County within the Portland Arch Nature Preserve which enters Bear Creek at the sharpest bend and has formed the small natural bridge called Portland Arch.
- ? Blue River from the confluence of the West Middle Forks of the Blue River in Washington County.
- ? The South Fork of the Blue River in Washington County.
- ? Lost River and all surface and underground tributaries upstream from the Orangeville Rise (T2N, R1W, Section 6) and the Rise of Lost River (T2N, R1W, Section 7) and the mainstream of the Lost River from Orangeville Rise downstream to its confluence with the East Fork of the White River.

Attachment 2 - Critical Wetlands and Critical Special Aquatic Sites

Bogs – including Acid bogs and Circumneutral bogs
Seeps – including Acid seep and Circumneutral seep
Cypress swamp
Dune and swale
Fens – including Forested fen
Swamps – including Forested and Shrub
Marl beach
Flats – including Muck and Sand
Panne
Sedge meadow
Sinkhole pond
Sinkhole swamps
Wet floodplain forest
Wet prairie
Wet sand prairie

Definitions and the full text of IDEM's Section 401 Water Quality Certifications issued are available on our Regulatory home page at <http://www.lre.usace.army.mil/regulatory>